

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMES McCRAY,	:	
	:	Civil Action No. 4:CV-06-00937
Plaintiff,	:	
	:	
v.	:	(Judge McClure)
	:	
DAUPHIN COUNTY PRISON and	:	
KIRK BOYLSTEIN	:	
	:	(Magistrate Judge Smyser)
Defendants.	:	

**ORDER**

February 5, 2007

On May 5, 2006, plaintiff James McCray, an inmate at the Dauphin County Prison, Harrisburg, Pennsylvania, filed a pro se civil rights action pursuant to 42 U.S.C. § 1983.<sup>1</sup> McCray also filed an application to proceed in forma pauperis.

The matter was initially referred to United States Magistrate Judge J. Andrew Smyser. On May 19, 2006, after an initial screening of the complaint, the magistrate judge issued an order directing the plaintiff to file an amended complaint. The plaintiff did so on June 14, 2006. On June 21, 2006, the magistrate judge directed the clerk of court to serve the amended complaint on the defendants.

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<sup>1</sup> Since the filing of the initial complaint, plaintiff has been released from custody. Nevertheless, his cause of action remains.

On November 13, 2006, the defendants filed a motion to dismiss/motion for summary judgment. (Rec. Doc. No. 14.) Additionally, they filed a supporting brief (Rec. Doc. No. 17) and a statement of undisputed material facts (Rec. Doc. No. 16). Plaintiff did not respond to the motion within the time period set out in Rule 7.6 of the Local Rules of the Middle District of Pennsylvania.

On December 14, 2006, the magistrate judge ordered the plaintiff to file a brief in opposition to the defendants' motion by January 2, 2007. The order warned that a failure to do so might result in the case being dismissed.

Plaintiff failed to file a brief in opposition to defendants' motion by January 2, 2007. On January 17, 2006, the magistrate judge issued a five-page report recommending that the case be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. No objections have been filed to this report and recommendation.

We agree with the magistrate judge's thorough report and recommendation that plaintiff's complaint should be dismissed. Rule 41(b) of the Federal Rules of Civil Procedure clearly states that an action can be dismissed for the failure of the plaintiff to prosecute or for a failure to comply with an order of court. As the magistrate judge's report and recommendation indicates, plaintiff has failed to both prosecute the case and comply with the court's December 14, 2006 order. Furthermore, the December 14, 2006 order warned that a failure to comply may

result in a dismissal, and the plaintiff failed to respond anyway. Finally, plaintiff has not objected to the magistrate judge's recommendation that the action be dismissed. Thus, it appears that plaintiff has abandoned this action and dismissal is appropriate. Therefore, we will adopt the magistrate judge's report and recommendation in full and dismiss the action without prejudice.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. United States Magistrate Judge J. Andrew Smyser's Report and Recommendation is adopted in full. (Rec. Doc. No. 23.)
2. The plaintiff's amended complaint is dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute and failure to comply with the court's December 14, 2006 order.
3. The clerk is directed to close the case file.

s/ James F. McClure, Jr.  
James F. McClure, Jr.  
United States District Judge